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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)
LUC BRANDT ET AL.) Group Art Unit 1734
Serial No. 10/613,873)
Filed: July 2, 2003) Examiner James D. Sells
For: TECHNIQUE TO FILL SILENCERS) Attorney Docket 25295A

Mail Stop: AF
Commissioner for Patents, P.O. Box 1450
Alexandria, VA 22313-1450
Attention: Board of Appeals and Interferences

REMARKS ACCOMPANYING REQUEST FOR
PRE-APPEAL BRIEF CONFERENCE

Honorable Sir:

Pursuant to the procedure specified in the Notice published in the Official Gazette on July 12, 2005, review is requested for the following reasons.

The final rejection contains clear errors in that that claimed limitations are clearly not met by the cited references.

Claims 1-3 and 9-11 stand rejected as being anticipated by the Wolf et al. U.S. Patent No. 5,926,954 reference.

As explained on page 8 of Applicants' amendment filed January 21, 2005, claim 1 recites a *muffler insert* having both a body of wool-type fibrous material conforming to the shape of a compartment within a tool and a yarn wound around the wool-type fibrous body, where the volume of such wool-type fibrous body is confined by the yarn.

The Wolf reference fails to show a volume of *wool-type fibrous* material wrapped by a yarn. As further explained on page 8 of the above-referenced amendment, the Wolf reference requires a tube with layers of yarn and a sheet-like septum over the layer of yarn. (See Wolf, at column 1, lines 62-64 and column 3, lines 57-58). Placement of the septum, which is clearly defined in Wolf as a "thin flat piece of material," may accomplish Wolf's desired objectives of making a silencer, but Wolf neither discloses nor suggests confining a volume of a wool-type fibrous material. The Wolf reference did not address, let alone purport to solve, the problem of confining a volume of fibrous material.

In the Office Action dated September 20, 2005, at page 2, the Examiner asserts that Wolf's septum may comprise e-glass, fiberglass or stainless steel wool. However, the Wolf's "thin flat" sheet of septum material would not anticipate a wool-type fibrous body of material. The Wolf silencer is devoid of any "fluffed-up" wool-type fibrous material. The septum in the Wolf reference can not be reasonably interpreted as a wool-type fibrous body of material. Rather, a fibrous wool-type material and a "sheet of septum material" have widely varying properties, including their respective volumes and densities. A sheet of septum material would not be considered to be a wool-type fibrous material.

The Wolf reference also fails to show a tool which receives a volume of a wool-type fibrous material. The invention herein recites a "body of wool-type fibrous material conforming to the shape of a *compartment in a tool*." The wound yarn *confines the volume* of the body. Those elements must either be inherent or disclosed expressly and must be arranged as in the claim in order for the Examiner to find that Wolf anticipates the invention set forth herein. There is nothing in the Wolf reference that would give the artisan any reason to change the Wolf silencer configuration to add a wool-type material having a volume that must be confined in order to conform to a muffler. Rather, it is the combination of the wool-type fibrous material conforming to the tool compartment, the wound yarn and the confining of the volume of wool-type fibrous material and the wound yarn, which provides the inventive muffler insert.

Further, as pointed out on page 8 of the above-referenced amendment, the Wolf reference fails to anticipate the present invention, but instead teaches away from the present invention by actually identifying its wound structure as an improvement over such blown fibrous material. (See, for example, Column 1, Lines 29-34, and Column 4, Lines 24-28). Therefore, the Wolf reference cannot be a disclosure of Appellants' invention, but rather is a teaching away from the invention.

Claims 4-8 and 16-33, and 35-36 stand rejected as being unpatentable over the Wolf reference in view of the Brandt et al. U.S. Patent No. 6,412,596 B1 reference.

As explained on page 9 of the above-referenced amendment, the independent claims 16 and 25 recite methods which include winding a yarn around a body of wool-type fibrous material. A reading of the specification, at paragraph 47, clearly shows that the wool-type fibrous body has a *volume which must be confined*.

Neither the Wolf nor the Brandt reference suggests a method for forming a wool-type fibrous body in a tool, wrapping the body with a yarn, and then removing the "yarn wrapped body" from the tool. Rather, the Wolf reference wraps a sheet-like septum around yarn. The Wolf reference does not disclose a body of wool-type fibrous material that is made within a compartment in a tool.

The Brandt reference teaches permanently filling the muffler shell by dispensing the fibrous material from a nozzle which must be inserted into each compartment of the muffler itself. (See Brandt column 5, lines 25 et seq.). In the Brandt reference, the fibrous material is never removed from the muffler shell. The Brandt reference thus fails to address the need to prevent the "springing out" of the fibrous material from its confined volume, which problem is solved by the present invention. (See paragraph 47 of instant application).

The Examiner argues, at page 3 of the above-referenced Office Action, that it would be obvious to employ "perforated partitions and fiber introduction system" of Brandt in the silencer and method of Wolf. There is no teaching or suggestion in either the Wolf and/or Brandt references to combine such different kinds of materials in one muffler; i.e., loose wool-type fibrous material which is wound with a yarn

material. No one skilled in the art would combine the Brandt permanent muffler-filling process with the Wolf "flat yarn and sheet septum" silencer to achieve a method for forming a muffler insert in a compartment of a tool, then removing the formed muffler insert from the tool for subsequent insertion into a muffler shell.

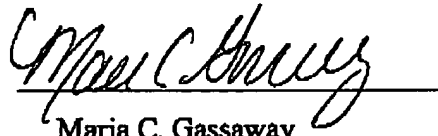
The Examiner also argues, at page 4 of the above-referenced Office Action, that the "wound silencer appears to conform to the shape of the canister in the manner claimed by the applicant." There is no teaching in either the Wolf or the Brandt reference of *filling a tool with a desired volume* of a wool-type fibrous material. No one skilled in the art would look to the Brandt muffler in order to form a *removable* body of fibrous material. There also is no suggestion to take the volume of the wool-type material wrapped by a yarn and then insert it into a muffler shell. Also, neither the Wolf nor the Brandt reference suggests the method of claim 25 for using a tool having upper and lower sections that are capable of being separated to form a gap. There is no teaching or suggestion in either the Wolf or Brandt references for utilizing the tool and winding machine to wind the yarn within the gap in the tool. Finally, there is also no teaching or suggestion in either the Wolf or Brandt references for utilizing the gap forming and winding machine to wind the yarn around an exposed portion of the wool-type fibrous material.

If an independent claim is nonobvious under 35 U.S.C. §103(a), then any claim depending therefrom is nonobvious. *In re Fine*, 837 F.2d 1071, 5 USPQ 2d 1596 (Fed. Cir. 1988). In particular, dependent claim 5 describes a yarn that is capable of disintegration where the polymer yarn has a tensile strength at room temperature of at least 550 megapascals and having a tensile strength at temperatures greater than about 80 degrees Celsius of at most 50 megapascals. The polymer yarn allows the filled and wound insert to be handled, transported, and inserted into a muffler shell to form a muffler. The low tensile strength of the wound yarn allows the yarn to disintegrate upon first use of the muffler. Neither cited reference suggests providing a yarn material that temporarily holds together fibrous material as a body, then is disintegrated once the body is inserted into a vehicle. Also, dependent claims 18 and

27 describe rotating a portion of a winding machine around the tool such that the yarn is wound onto the body of fibrous material to form the muffler insert. Neither cited reference suggests rotating a winding machine around a tool which temporarily contains a body of fibrous material.

In view of the foregoing arguments, the claims are in condition for allowance. Favorable action is respectfully requested. If any fees are due in connection with the filing of this notice, please charge such necessary fees to Deposit Account No. 50-0568.

Respectfully submitted,


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